

FILED

IN THE UNITED STATES DISTRICT COURT FOR FEB 26 2013

THE WESTERN DISTRICT OF OKLAHOMA

ROBERT D. DENNIS, CLERK
U.S. DIST. COURT, WESTERN DIST. OF OKLA.
BY Yuh DEPUTY

JON ANDREW COTTRIEL,)
)
Plaintiff,)
)
vs.)
)
JUSTIN JONES, Director,)
Oklahoma Department of)
Corrections,)
)
Defendant.)

No. CIV-13-135-W

ORDER

On February 13, 2013, United States Magistrate Judge Suzanne Mitchell issued a Report and Recommendation in this matter and recommended that the Application for Writ of Mandamus [Doc. 1] filed by plaintiff Jon Andrew Cottriel be dismissed because this Court lacks subject matter jurisdiction over this action. Cottriel, proceeding pro se, was advised of his right to object, and the matter now comes before the Court on Cottriel's Objection to Report and Recommendation. See Doc. 10.

Upon de novo review of the record, the Court concurs with Magistrate Judge Mitchell's suggested disposition of this matter. As Magistrate Judge Mitchell noted, "it was . . . [Cottriel's] clear intent to file a separate action," Doc. 9 at 2,¹ "[r]ather than seeking to enforce the injunction [entered by the Court] in Case No. CIV-03-125-W by requesting . . . relief in that case." Doc. 9 at 3. Because this Court is not authorized to issue a writ of mandamus against state officials or agencies, as Cottriel has requested, dismissal of the

¹The papers filed by Cottriel included, inter alia, a Motion for Leave to Proceed in Forma Pauperis, wherein Cottriel indicated that he was "apply[ing] for leave to . . . [c]ommence this action for habeas corpus/civil rights relief." Doc. 2 at 1. Cottriel also submitted a filing fee in the amount of \$350.00. See Doc. 8.

instant action is warranted. E.g., 28 U.S.C. § 1361. See Sockey v. Gray, 159 Fed. Appx. 821 (10th Cir. 2005)(cited pursuant to Tenth Cir. R. 32.1)(federal courts without jurisdiction to grant writs of mandamus against state and local officials).

Accordingly, the Court

(1) ADOPTS the Report and Recommendation issued on February 13, 2013;

(2) DISMISSES Cottriel's Application for Writ of Mandamus [Doc. 1] file-stamped February 5, 2013, for lack of subject matter jurisdiction;²

(3) deems MOOT Cottriel's Motion for Leave to Proceed in Forma Pauperis [Doc. 2] file-stamped February 5, 2013, since Cottriel paid the filing fee on February 6, 2013, see Doc. 8; and

(4) deems MOOT Cottriel's Motion for Temporary Restraining Order [Doc. 3] also file-stamped February 5, 2013.

ENTERED this 26th day of February, 2013.



LEE R. WEST
UNITED STATES DISTRICT JUDGE

²In doing so, the Court DECLINES Cottriel's request that the Clerk of the Court be ordered "to renumber th[is] case back to CIV-03-125-W" Doc. 10 at 2. If Cottriel intends to pursue his request for relief against defendant Justin Jones, in his official capacity as Director of the Oklahoma Department of Corrections, Cottriel should do so by filing the appropriate papers in Case No. CIV-03-125-W.